

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants:	Nalin Mistry et al.	§ Art Unit:	2616
		§	
Serial No.:	10/645,489	§ Confirmation No.:	8712
		§	
Filed:	August 22, 2003	§ Examiner:	Man U. Phan
		§	
For:	Multi-Staged Services Policing	§ Atty. Dkt. No.:	15791ROUS02U (NRT.0180US)
		§	
		§	

**Mail Stop AF**  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Dear Sir:

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a Notice of Appeal.

REJECTION UNDER 35 U.S.C. § 112, ¶ 1

With respect to claims 1, 13, 14, and 23, the Office Action argued that the limitation “one or more processors” has “no support in the original specification.” 12/9/2009 Office Action at 6.

Applicant respectfully disagrees. Fig. 3 of the original application specifically depicts a processor 308 in a policer 210. As explained in the Detailed Description section of the present application, Fig. 3 “illustrates an exemplary one of the services policers that make up the multi-stage services policer 200 of Fig. 2.” Specification, page 6, lines 19-20. The exemplary architecture depicted in Fig. 3 shows the architecture of the best effort CoS policer 210.

Thus, a person of ordinary skill in the art would clearly understand that each of the policers shown in Fig. 2 would include a processor as depicted in Fig. 3, in one example embodiment. Therefore, since claim 1 is directed to a multi-stage services policer, which is supported by the multi-stage services policer 200 of Fig. 2, it is clear that written description

support exists for one or more processors in one or more policers of the multi-stage services policer.

Similar support exists for “first processor and second processor” in claim 22.

In view of the foregoing, it is clear that each of the above-referenced claims complies with the written description requirement of § 112, ¶ 1. Therefore, withdrawal of the § 112, ¶ 1, rejection is respectfully requested.

#### REJECTION UNDER 35 U.S.C. § 101

Claim 12 was rejected under § 101 as purportedly being directed to non-statutory subject matter. The Office Action stated that “software routine” as recited in claim 12 was not defined. It is unclear what is meant by defining a software routine. It is clear that claim 12 recites that the computer-executable instructions contained in a computer readable storage medium when executed by a processor in a policer cause the processor to perform the recited tasks of claim 12. In the specification, reference is made to a “services policing software for executing methods exemplary of this invention from a software medium 112 which could be a disk, a tape, a chip, or a random access memory ....” Specification, page 5, lines 2-6. Fig. 3 of the present application shows an example of a processor, which the software can be executed on to perform a method according to some embodiments of the invention.

Fig. 3 of the present application also shows a memory 310, which is an example of a computer readable storage medium. The medium 112 shown in Fig. 1 of the present application is another example of a computer readable storage medium, with the specification explaining that this medium 112 can be a disk, a tape, a chip, or a random access memory.

Thus, it is clear that “computer readable storage medium” as recited in claim 12 is a tangible article of manufacture, which is clearly one of the statutory categories. Thus, the assertion in the Office Action that a “computer readable storage medium per se is not in one of the statutory categories” is incorrect. 12/9/2009 Office Action at 7.

In view of the foregoing, it is respectfully submitted that claim 12 is clearly directed to statutory subject matter, and withdrawal of the § 101 rejection is therefore respectfully requested.

### REJECTION UNDER 35 U.S.C. § 112, ¶ 1, OF CLAIM 12

The § 112, ¶ 1, rejection of claim 12 is based on the § 101 rejection of claim 12. Since claim 12 is clearly directed to statutory subject matter, the § 112, ¶ 1, rejection of claim 12 has been overcome.

### REJECTION UNDER 35 U.S.C. § 103

It is respectfully submitted that the obviousness rejection of claim 1 over Galloway and Ganti is erroneous.

To make a determination under 35 U.S.C. § 103, several basic factual inquiries must be performed, including determining the scope and content of the prior art, and ascertaining the differences between the prior art and the claims at issue. *Graham v. John Deere Co.*, 383 U.S. 1, 17, 148 U.S.P.Q. 459 (1965). Moreover, as held by the U.S. Supreme Court, it is important to identify a reason that would have prompted a person of ordinary skill in the art to combine reference teachings in the manner that the claimed invention does. *KSR International Co. v. Teleflex, Inc.*, 127 S. Ct. 1727, 1741, 82 U.S.P.Q.2d 1385 (2007).

Here, it is respectfully submitted that even if Galloway and Ganti could be hypothetically combined, the hypothetical combination of the references would not have led to the claimed subject matter. As conceded by the Office Action, Galloway fails to disclose receiving feedback from a downstream services policer. 12/9/2009 Office Action at 9. In fact, claim 1 recites the following combination of elements:

- based on said analysis, transmit said traffic unit to said downstream services policer; and
- receive feedback from said downstream services policer.

Thus, it is noted that claim 1 specifically recites that the upstream services policer transmits a traffic unit to a downstream services policer, and the upstream services policer receives feedback from such downstream services policer (to which the upstream services policer has transmitted the traffic unit). With respect to claim 1, the Office Action cited policers 50 and 54 shown in Fig. 4 of Ganti. According to the Office Action, the “feedback” recited in claim 1 was equated with “feedback information R1 from the downstream service policer.” 12/9/2009 Office Action at 10. The information R1 in Ganti is a rate guarantee of the policer 50. The rate guarantee R1 is **not** feedback information from the policer 54. Thus, if the Office Action is

arguing that the policer 50 of Ganti constitutes the upstream services policer of claim 1, and the policer 54 of Ganti constitutes the downstream services policer of claim 1, then there is absolutely no teaching whatsoever in Ganti of the policer 54 sending feedback information to the policer 50.

Therefore, even if Galloway and Ganti could be hypothetically combined, the hypothetical combination of references would not have led to the claimed subject matter.

In view of the foregoing, it is clear that the obviousness rejection of claim 1 is erroneous.

Independent claims 10, 12 and 13 are similarly allowable over Galloway and Ganti.

With respect to independent claim 14, neither Ganti nor Galloway provides any teaching of a third services policer that receives output from both a first services policer and a second services policer. The serial connection of policers 50-62 shown in Fig. 4 of Ganti illustrates the output of one policer being connected to the input of just a single other policer, with none of the policers receiving outputs of multiple policers. Therefore, since the hypothetical combination of Galloway and Ganti fails to disclose or hint at the subject matter of claim 14, claim 14 is non-obvious over Galloway and Ganti.

Dependent claims are allowable over Galloway and Ganti for similar reasons as corresponding base claims.

## CONCLUSION

In view of the foregoing, withdrawal of the final rejections is respectfully requested. The Commissioner is authorized to charge any additional fees and/or credit any overpayment to Deposit Account No. 14-1315 (15791ROUS02U).

Respectfully submitted,

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/Dan C. Hu/  
Dan C. Hu  
Registration No. 40,025  
TROP, PRUNER & HU, P.C.  
1616 South Voss Road, Suite 750  
Houston, TX 77057-2631  
Telephone: (713) 468-8880  
Facsimile: (713) 468-8883